

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,) MM Docket No. 01-281
FM Broadcast Stations.) RM-10287
(Washington, Watkinsville, Gray, Forsyth,)
Irwin, and Atlanta, Georgia)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 3, 2003

Released: September 5, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it the Notice of Proposed Rule Making in this proceeding.¹ Southern Broadcasting Companies, Inc. ("Southern Broadcasting") filed Comments and Contingent Reply to Counterproposal. New Tracks Media ("New Tracks") filed a Counterproposal as a refilling of its earlier Petition for Rule Making. Infinity Broadcasting Operations, Inc. filed Reply Comments. For the reasons stated below, we are reallocating Channel 261A from Washington to Watkinsville, Georgia, and are modifying the Station WXKT to specify operation on Channel 261A at Watkinsville, Georgia.

Background

2. At the request of Southern Broadcasting, licensee of Station WXKT, Channel 261A, the Notice proposed the reallocation of Channel 261A from Washington to Watkinsville, Georgia, and modification of the Station WXKT license to specify operation on Channel 261A at Watkinsville. This request was filed pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Community of License"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). In considering a reallocation proposal, we compare the existing versus the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.²

¹ *Washington and Watkinsville, Georgia*, 16 FCC Rcd 17876 (MM Bur. 2001).

² 90 FCC 2d 88 (1982). The FM allotment priorities are (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service, and (4) Other public interest matters. Co-equal weight is given to Priorities 92) and (3)

3. On September 14, 2001, prior to the November 26, 2001, comment date in this proceeding, New Tracks filed a Petition for Rule Making.³ In its Petition for Rule Making, New Tracks proposes the allotment of Channel 261A to Gray, Georgia, as a second local service. To accommodate this allotment, New Tracks proposes the substitution of Channel 279A for Channel 261A at Forsyth, Georgia, and modification of the Station WQMJ license to specify operation on Channel 279A at Forsyth. To accommodate a Channel 279A allotment at Forsyth, New Tracks proposes the substitution of Channel 278A for Channel 279A at Irwinton, Georgia, and modification of the Station WVKX license to specify operation on Channel 278A at Irwinton. Finally, to accommodate a Channel 278A allotment at Irwinton, New Tracks proposes a reclassification of Station WVEE, Channel 277C, Atlanta, Georgia, to a Class CO allotment.

4. We are dismissing the New Tracks proposal. The proposed Channel 279A substitution at Forsyth is short-spaced to the reference site for the Channel 279A allotment at Cusseta, Georgia, as well as the two pending applications for this allotment (BPH-19930701ME and BPH-19930701MG). New Tracks requests a change in the reference coordinates to remove these short-spacings. However, the two pending applications are entitled to have their proposed transmitter sites protected from all subsequent rulemaking proposals and applications.⁴ For this reason, the proposal is defective and will not be considered in this proceeding.⁵

5. We are reallocating Channel 261A from Washington to Watkinsville, Georgia, and are modifying the Station WXKT license to specify Watkinsville as the community of license.⁶ This will provide a first local service to Watkinsville while Washington will continue to receive local service from AM Station WLOV. In addition to providing a first local service to an incorporated community of 2,097 persons, this reallocation will result in a net service gain to 111,798 persons.

6. Although Watkinsville is not located within any urbanized area, the reallocation to Watkinsville will provide a 70 dBu service to 56.6% of the Athens, Georgia Urbanized Area. In this regard, we are concerned with the potential migration of stations from lesser-served rural areas to well-served urban areas. For this reason, we will not blindly apply a first local service preference of the FM allotment priorities when a station seeks to reallocate its channel to a suburban community in or near an urbanized area. In making such a determination, we apply existing precedents.⁷ In essence, we consider the extent the station will provide service to the entire urbanized area, the relative populations of the suburban and central city, and, most important of all, the independence of the suburban community.

7. Watkinsville is entitled to consideration as a first local service. Watkinsville is located outside the Athens, Georgia, Urbanized Area, and Station WXKT operates at the minimum Class A FM allotment which minimizes potential service to the Urbanized Area. Consistent with the factors set forth

³ New Tracks subsequently refiled its proposal as a Counterproposal in this docket.

⁴ See *Conflicts Between Applications and Petitions to Amend the FM Table of Allotments*, 7 FCC Rcd 4917 (1992), *recon. granted in part*, 8 FCC Rcd 4743 (1993).

⁵ See *Rockport, Gregory, Alice and Armstrong, Texas*, 4 FCC Rcd 8075 (MM Bur. 1989)

⁶ The reference coordinates for the Channel 261A allotment at Watkinsville, Georgia, are 33-52-19 and 83-15-19

⁷ See e.g. *Huntington Broadcasting Co. v. FCC*, 192 F 2d 33 (D.C. Cir. 1951); *RKO General, Inc.*, 3 FCC Rcd 3222 (1990), *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988)

in *Faye and Richard Tuck, supra*, Watkinsville is not dependent upon the Athens, Georgia, Urbanized Area for its existence. It is located outside of the Urbanized Area in an adjoining county. Watkinsville is an incorporated community of 2,097 persons governed by a mayor and city council with an annual budget of \$782,000. Watkinsville is also the county seat of Oconee County. Watkinsville has its own public library and police and fire departments. In addition to statements from community leaders regarding the independence of Watkinsville, it has over 200 businesses, its own schools, a health facility, recreational facilities and a community center. Watkinsville also has its own banks, churches and civic organizations. Finally, Watkinsville has its own post office and ZIP code.

4. Accordingly, pursuant to the authority contained in Sections 4(1), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective October 20, 2003, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Watkinsville, Georgia	261A
Washington, Georgia	-----

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the Station WXKT license for the Channel 261A allotment at Washington, Georgia, IS MODIFIED, to specify Watkinsville, Georgia, as the community of license subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

6 IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

